

SENSITIVE

FEDERAL ELECTION
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

2014 OCT 10 AM 11:22

In the Matter of)

MUR 6701)

Independent Source PAC)

and Michael Corwin as treasurer)

DISMISSAL AND **CELA**
CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include, without limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law.¹ It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances.

The Office of General Counsel has scored MUR 6701 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.² For the reasons set forth below, the Office of General Counsel recommends that the

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

² The EPS rating information is as follows:
Response Filed: December 31, 2012.

Complaint Filed: December 5, 2012.

1 Commission dismiss the allegations that Independent Source PAC and Michael Corwin in
2 his official capacity as treasurer (collectively the "Committee" or "Respondents") violated
3 the Act and Commission regulations.³

4 Complainant Mark Knoop, Executive Director of the Republican Party of New
5 Mexico, alleges a discrepancy between the Committee's ending cash on hand balance of
6 \$254,625.45 reported in its 2012 July Quarterly Report and its beginning cash on hand
7 balance of \$9,165.28 reported in its 2012 October Quarterly Report.⁴ Compl. at 1.

8 The Committee admits that there was a discrepancy between the relevant cash on
9 hand balances, but attributes the difference to a "technical glitch" that it claims occurred
10 when the funds from two receipts itemized on its Schedule A, report of receipts, were
11 disbursed and itemized on its Schedule B, report of disbursements, but were not subtracted
12 from the available cash on hand by the FEC software. Resp. at 1-2. Specifically, the
13 Committee claims that a \$30,000 receipt on April 11, 2012, from the Communication
14 Workers of America ("CWA") was transferred from its federal account to its state account
15 on April 12, 2012, and that a \$220,000 receipt on June 11, 2012, from CWA was refunded
16 as an excessive contribution for "bookkeeping purposes" on June 20, 2012. *Id.*

17 The Committee claimed that it itemized both as disbursements on its Schedule B,
18 but that the FEC software did not automatically subtract them from the total receipts,

³ The Complainant and Respondents were parties in MUR 6573, which concerned allegations that the Committee failed to disclose independent expenditures and failed to include proper disclaimers in television advertisements. As to these Respondents, the Commission found no reason to believe that the Committee violated 52 U.S.C. § 30104(g) (formerly 2 U.S.C. § 434(g)) and dismissed allegations that the Committee violated 52 U.S.C. § 30120(d) (formerly 2 U.S.C. § 441d).

⁴ In addition to alleging violations falling under the Act, the Complainant alleges other illegal conduct related to "receiving and distributing emails that were stolen from Governor [Susana] Martinez's political committee." Complainant claims that the FBI is investigating the issue. Compl. at 1.

1 which resulted in an inflated cash on hand balance on the Committee's 2012 July Quarterly
2 Report. *Id.* at 2. According to an e-mail attached to the Response, on June 12, 2012, the
3 Committee Treasurer spoke with a representative in the Electronic Filing Office regarding
4 "technical issues of [his] own creation." Resp., Attach.

5 In January 2013, the Reports Analysis Division ("RAD") sent a Request for
6 Additional Information ("RAI") to the Committee regarding the cash on hand
7 discrepancy.⁵ In February 2013, the Committee amended its 2012 July Quarterly Report to
8 disclose the Committee's \$30,000 transfer to its state account and the \$220,000 refund to
9 CWA, and to correct the resulting cash on hand balance.⁶ It appears that the Committee
10 has properly amended its disclosure reports to accurately reflect the disbursements in
11 question and to disclose an accurate cash on hand balance in its 2012 July Quarterly
12 Report.⁷

13 Committees are required to disclose disbursements and cash on hand balances
14 accurately. 52 U.S.C. § 30104(b)(1), (4) and (6)(B)(v) (formerly 2 U.S.C. § 434(b)(1), (4),
15 and (6)(B)(v)); 11 C.F.R. § 104.3(a)(1) and (b). Committees are also responsible for the
16 timely and complete filing of disclosure reports and for the accuracy of the information
17 contained therein. 11 C.F.R. § 104.14(d). Here, the Committee acknowledges that the
18 ending cash on hand balance reported in its 2012 July Quarterly Report was inaccurate.

⁵ RAI (April 4, 2013) available at <http://docquery.fec.gov/pdf/093/13330028093/13330028093.pdf>.

⁶ 2012 July Quarterly Report of Receipts and Disbursements (Amended Feb. 15, 2013) available at <http://docquery.fec.gov/pdf/515/13960938515/13960938515.pdf>.

⁷ Lack of reconciliation between beginning and ending cash on hand balances is categorized as a mathematical discrepancy under Standard 6 of the *Reports Analysis Division Review and Referral Procedures*. This matter was not referred to OGC because the Committee, after receiving its RAI, amended its reports and explained the discrepancy.

1 The Committee claims that the error was due to an FEC software failure. We note that the
2 Committee's Treasurer apparently sought assistance in amending a different disclosure
3 report and an FEC representative was able to walk him through filing the amendment.
4 Resp., Attach. However, the information provided in the Response does not discuss a
5 software failure or indicate that Mr. Corwin sought assistance from the Electronic Filing
6 Office regarding the disbursements in question. *Id.* Thus, it is possible that the error was
7 due to an incorrect entry of the disbursements. Nevertheless, the Committee promptly
8 responded to an RFAI in order to amend its disclosure reports.

9 In light of the relatively limited scope of the potential violations at issue and the
10 Committee's corrective action, the Office of General Counsel recommends that further
11 Enforcement resources are not warranted, and as a matter of its prosecutorial discretion,
12 the Commission should dismiss this matter pursuant to *Heckler v. Chaney*, 470 U.S. 821
13 (1985). In addition, the Office of General Counsel recommends that the Commission
14 approve the attached Factual and Legal Analysis and the appropriate letters and close the
15 file.

16 **RECOMMENDATIONS**
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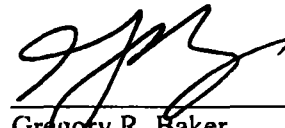
- 18 1. Dismiss the allegation that Independent Source PAC and Michael Corwin in his
19 official capacity as treasurer violated the Federal Election Campaign Act of 1971,
20 as amended, and Commission regulations;
21
22 2. Approve the attached Factual and Legal Analysis and the appropriate letters; and

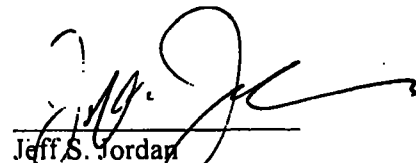
3. Close the file.


General Counsel

10/9/14
Date

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